COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{chapter VIII, Rule 32(2)(b)}

Description of the Case.

Dinesh Chandra S/o Ram Kumar

.....Appellant

Versus

The State **.....Respondent**

Sri Chetan Joshi, learned counsel for the appellant
Sri Harish Pujari, learned Addl. GA for the State

Approved for reporting.
~~Not approved for reporting~~.

Dated: **September 18, 2007**

(Dharam Veer, J.)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL NO. 154 OF 2007
(Old No. 3007 of 1983)

Dinesh Chandra S/o Ram Kumar R/o Vill. Jaspur, P.S. Jaspur

.....Appellant

Versus

The State .....Respondent

Dated: September 18, 2007

Sri Chetan Joshi, learned Counsel for the appellant
Sri Harish Pujari, learned Addl. GA for the State

HON. DHARAM VEER, J.

This criminal appeal, preferred u/s 374(2) of Code of Criminal Procedure, 1973 *(hereinafter to be referred as Cr.P.C),* is directed against the judgment and order dated 11.11.1983 passed by I Additional Sessions, Judge Nainital in Sessions Trial No.23 of 1982, whereby the learned I Additional Sessions Judge has convicted the appellant-Dinesh Chandra under Sections 324 of Indian Penal Code, 1860 *(hereinafter to be referred as IPC.)* and sentenced him for two years R.I.

2. In brief, the prosecution case is that on 3.10.1981 at about 8:30 P.M., the complainant Khursheed had gone to see Ramlila along with his friend Intezar Hussain, Salim S/o Faruq, Salim S/o Jafar Mistri and Shahid. When they reached Ramlila ground, Jaspur then the present appellant has asked them that why they had come there and he also threatened the complainant and his companions to kill them and the appellant with the intention to kill, caused injury of knife to Intezar Hussain. When Khursheed and Salem S/o Jafar had tried to intervene and also tried to save Intezar, then appellant also caused injuries of knife to Saleem S/o Jafar and Khurshid. Then the injured Intezar Hussain, who fell on the spot, was taken to the police station by the Khursheed, Saleem S/o Faruq and Shahid. After that Saleem S/o Jafar had gone in the house of Intezar to inform his family members. With the same averments, the FIR was lodged on 3.10.1981 at 21:10 hours at P.S. Jaspur the FIR is Ex.Ka-1. On the basis of this FIR, a Chik Report was

prepared by Head Moharrir Sachidanand, that Chik FIR is Ex.Ka-9. The entry was made in the G.D., the carbon copy of G.D. is Ex.Ka-10. Injured Intezar Hussain was medically examined by the Medical Officer, Combined Hospital, Jaspur on 3.10.1981 at 9:55 P.M. and injured Khursheed was also medically examined by the same doctor on the same day i.e. 3.10.1981 at 10:40 P.M. Injured Mohd. Saleem S/o Zafar was also medically examined by the same doctor on 4.10.1981 at 1:05 A.M. The investigation of the case was entrusted to S.I. Dharam Singh, P.W.8. During the investigation, he has taken the blood stained clothes of the injured Interzar Hussain and Khurshid and a Fard was prepared, i.e. Ex.Ka-5. The site plan of the place of occurrence was also prepared, i.e. Ex.Ka-6. After completing the investigation, the I.O. has submitted the charge sheet against the present appellant u/s 307 IPC on 18.10.1981, i.e. Ex.Ka-8 in the court of Munsif Magistrate, Kashipur.

3. Learned Munsif Magistrate, Kashipur has committed the case to the court of Sessions on 17.02.1982 under Section 209 Cr.P.C. after complying with the provisions of Section 207 Cr.P.C.

4. On 12.08.1983, the learned I Additional Sessions Judge, Nainital has framed the charge against the appellant u/s 307 of IPC. The charge was read over and explained to the appellant who pleaded not guilty and claimed to be tried.

5. To prove its case, the prosecution has examined P.W.1 Sri Intezar Hussain (injured), P.W. 2 Khurshid (injured) and complainant of the case, P.W.3 Sri Saleem S/o Jafar (injured), P.W.4 Mohd. Saeed (Eyewitness), P.W.5 Atiqur Rehman, subscriber of the FIR, P.W.6 Dr. D.C. Dhyani, who has medically examined injured persons, P.W.7 Mohd. Ilyas and P.W.8 S.I. Dharam Singh, I.O, of the case .

6. Thereafter, the statement of the appellant was recorded u/s 313 of Cr.P.C. who has denied the allegation made against him. He has stated that he is an innocent person and he

has falsely been implicated. However, he had not produced any oral or documentary evidence.

7. After appreciating the evidence on record and after hearing learned counsel for the parties, the learned I Additional Sessions Judge, Nainital vide has judgment and order dated 11.11.1983 convicted and sentenced the appellant for two years R.I. u/s 324 of IPC. Against the said judgment and order dated 11.11.1983, the appellant has filed present appeal.

8. I have heard Sri Chetan Joshi, learned counsel for the appellant and Sri Harish Pujari, learned Addl. G.A. for the Sate and perused the entire material available on record.

9. To prove its case, the prosecution has examined P.W.1 Intezar Hussain who has stated that appellant Dinesh Singh was known to him. The incident took place about one year and 10 months before, the time was about 8:30 P.M. He along with Khurshid, Salim, Shahid and Salim was going towards Ramlila ground to see the Ramlila. When they have reached Ramlila ground then Dinesh (present appellant) had come and asked them that why they had come there and threatened them to life. After that he (appellant Dinesh) had caused the injury with knife to him. When Khursheed and Saleem tried to save him then the appellant also caused injury of knife to both of them. After that Khurshid and Saleem have got the injures. The FIR was dictated by the Khurshid in Ramlila ground to Atique and after that he was taken to the police station. There the application was submitted and thereafter he was sent to the hospital along with two constables and he was also medically examined. He has further stated in the Ramilila ground at the time of incident, electric light was there. The appellant has caused injuries to him in front of shop of Raja Ram and he was remained in the hospital for 5-6 days. This witness was cross-examined at length by the defence counsel but nothing has come out from his statement which may create any doubt in his evidence The evidence of this witness is reliable and believable.

10. P.W.2 is Khurshid who has stated that appellant Dinesh was known to him. The incident took place about one year and 10 months before, the time was about 8:30 P.M. When he along with Intezar, Salim, Shahid and Salim reached at Ramlila ground to see Ramlila, then Dinesh (Present appellant) had come and asked them that why they has come there and threatened them to life. After that he (appellant Dinesh) had caused the injury by knife to Intezar. When they tried to save him then the appellant also caused injury to him with knife and he also caused injury to Salim. He has also stated that this incident had occurred in front of shop of Raja Ram and electric light was there and they have identified appellant Dinesh in the electric light. After the incident, he had dictated the FIR to Atique and he had also put his thumb impression on that application. After that he had taken Intezar to the police station and then Intezar was sent to the hospital along with two constables and he also accompanied them. This witness was also cross-examined at length by the defence counsel but nothing has come out from his statement which may create any doubt in his evidence. The evidence of this witness is also reliable and believable.

11. P.W. 3 is Saleem S/o Umar Jafar who has stated in his statement that the incident took place about one year and 10 months before. When he along with Khursheed, Intezar, Shahid and Salim reached at Ramlila ground, then Dinesh (present appellant) had met and asked them that why they had come there and threatened them to life. After that Intezar had moved from that place and then Dinesh had caused the injury with knife to Intezar. When he tried to save him then the appellant also caused injury to him with knife and he (the appellant) also caused injury to Khursheed with knife and after that the appellant ran away from the spot. On the place of incident, the FIR was dictated by Khursheed to Atique. After that he along with Intezar and Khurshid had gone to the police station. After that they went to the hospital and two constables also

accompanied them and they were medically examined in the hospital. He has also stated that on the place of occurrence, electric light was there and they have identified appellant Dinesh in the electric light. This witness was also cross-examined at length by the defence counsel but nothing has come out from his statement which may create any doubt in his evidence. The evidence of this witness is also reliable and believable.

12. P.W.4 is Mohd. Saeed who has stated that appellant Dinesh was known to him. The incident took place about one year and 10 months before, the time was about 8:30 P.M. He along with Salim, Khurshid, Intezar and Salim reached at Ramlila ground where Dinesh met them and he asked them that why they had come there and also threatened them to life. Then they started to go back and then appellant Dinesh had caused the injury with knife to Intezar. When they tried to save Intezar then the appellant also caused injury with knife to Khurshid and Saleem. Thereafter, Khurshid had dictated the FIR and along with injured, they have gone to the police station and the FIR was lodged in the police station and the police persons taken the injured to the hospital for medical examination. He has also stated that on the place of occurrence, electric light was there and they had identified the present appellant in the electric light. This witness was also cross-examined at length by the defence counsel but nothing has come out from his statement which may create any doubt in his evidence. The evidence of this witness is also reliable and believable.

13. P.W. 5 is Atiqur Rehman who has stated that about one year and 10 months back, time was about 8:30 to 9:00 P.M., he had gone to Ramlila ground and in the Ramlila ground on the dictation of the Khurshid, he had written the FIR. He has identified that report which was written by him on the dictation of Khurshid, that report is Ex.Ka-1. This witness was also cross-examined at length by the defence counsel but nothing has come out from his statement which may create any doubt in his

evidence. The evidence of this witness is also reliable and believable.

14. P.W.6 is Dr.D.C. Dhyani who has stated that on 3.10.1981, he was posted as Medical Officer in-Charge, Combined Hospital Jaspur. He has medically examined Intezar Hussain on 3.10.1981 at 9:55 P.M. who was brought to him by Constable Deshraj. He has found following injury on his body:-

> *incised wound 7.5 cm x 2.5 cm over right side chest over 8th and 9th Rib. 12 cm below the right nipple. Towards right axilla. Penetrating towards umbilicus medially 6.5 cm. skin deep. Fresh bleeding.*

The doctor also opined that the injury was caused by come sharp edged weapon and the injury was fresh. At the time of medical examination, he has prepared the injury report of Intezar Hussain, i.e. Ex.Ka-2. He has further stated that the injury to the injured could be caused on 3.10.1981 at 8:30 P.M. by way of knife. He further stated that the injury was not on the vital part.

On the same day i.e. 3.10.1981, he has medically examined Khurshid Ahmed at 10:40 P.M. He found following injures on his body:-

1. *Incised wound left little finger 2 cm. x 1/4 cm. skin deep. Over middle phalynx of left little finger. Fresh bleeding*
2. *Incised wound over little middle finger 2 ½ cm. x ¼ cm. skin deep over middle phalynx of middle finger.*

He has further stated that the injures were simple in nature and could be accused by a sharp edged weapon like knife and the injury was fresh. He has prepared the injury report i.e. Ex.Ka-3. He has further stated that the injury could possible be caused on 3.10.1981 at 8:30 P.M.

On 4.10.1981 at 1:05 A.M. he has medically examined Mohd. Saleem and he found following injuries on his person:-

> *Lacerated wound 1 ½ x ½ cm. over left arm back. 6 cm above the left elbow joint back. No fresh bleeding*

He has also opined that the injury was simple and was caused by blunt weapon. Duration of the injury was 4 hours. He has prepared the injury report i.e. Ex.Ka-4. He has further stated that the injury could possibly be caused on 3.10.1981 at 8:30 P.M. by the hilt of the knife.

15. P.W. 7 is Mohd. Ilyas who has stated that on 4.10.1981, he had gone to P.S. Jaspur and in the Place station Jaspur, the blood stained clothes of injured Intezar Hussain and Khurshid were taken into possession by the Sub Inspector and these clothes were in the court when his statement was recorded in the court. He has identified the blood stained trouser, blood

stained T-Shirt, blood stained under shirt of injured Intezar and he also identified the blood stained trouser of injured Khursheed, these are Ex. 1 to Ex.4. A Fard was also prepared when the clothes were taken into possession, i.e. Ex.Ka-5.

16. P.W.8 is S.I. Dharam Singh who has stated that on 3.10.1981 he was posted as Sub-Inspector in P.S. Jaspur. On that day, the investigation of the case was entrusted to him. During the course of investigation, he has recorded the statements of the witnesses and prepared the site plan, that site plan is Ex.Ka-6. He has further stated that clothes of injured were taken by him into possession, these are Ex.1 to Ex.4 and a Fard was also prepared by him i.e. Ex.Ka-5. After completing the investigation, he has submitted the charge sheet i.e. Ex.Ka-8 He has further stated that on the basis of the report submitted the complainant Ex.Ka-1, Head Moharrir Sachidanand has prepared Chik Fir i.e. Ex.Ka-9 and the entry was made in the G.D. by Constable Sachidanand, the carbon copy of G.D. is Ex.Ka-10 and he had identified the signatures of Sachidanand.

17. After that the statement of the appellant was recorded u/s 313 Cr.P.C. who has denied the allegations made against him. He has stated that he is an innocent person and he has falsely been implicated. However, he did not produce any oral or documentary evidence.

18. From the evidence discussed above and also the facts and circumstances narrated above, it is proved beyond reasonable doubt by the prosecution that the appellant Dinesh Chandra has caused injury with knife in the Ramlila ground, Jaspur to Intezar, Khurshid and Saleem at about 8:30. P.M. and the FIR was of the same incident was dictated by the Khurshid to Atiq in the Ramlila ground and thereafter it was lodged in the P.S. Jaspur on 3.10.1981 at 21:10 hours and the injured Intezar Hussain was medically examined by the Medical Officer, Combined Hospital Jaspur on 3.10.1981 at 9:55 A.M. and injured Khurshid was examined on 3.10.1981 at 10:40 P.M. and injured Mohd. Salim was examined on 4.10.1981 at 1:05

A.M. by the same doctor. Thereafter, the blood stained clothes of injured Khurshid and Intezar Hussain were taken into possession by the I.O. on 4.10.1981 and Fard was prepared i.e. Ex.Ka-5. This fact is proved by the statement of P.W.1 Intezar Hussain, P.W.2 Khurshid, P.W.3 Salim S/o Jafar and P.W.4 Mohd. Sayed and their statements are also corroborated by the medical evidence of P.W.6 Dr. D.C. Dhyani and also by the Injury Reports of Intezar Hussain Ex.Ka-2, Khurshid Ahmad Ex.Ka-3 and Mohd. Salim Ex.Ka.4. The FIR is prompt and there is no delay in lodging the FIR. Accordingly, on the basis of the evidence discussed above, the case is well proved against the appellant Dinesh Chandra u/s 324 IPC and finding recorded by the trial court convicting and sentencing the appellant u/s 324 of IPC on the basis of the evidence discussed above is justified and as per law. I am also in full agreement with the findings recorded by the trial court for the conviction of the appellant u/s 324 IPC.

19. Sri Chetan Joshi, learned cousinly for the appellant has also submitted that the conviction of the appellant u/s 324 IPC on the basis of the above said evidence as recorded by the trial court is justified and he does not want to challenge the conviction part of the appellant. He has confined his argument only up to the point of sentence. It was submitted that the appellant was a child on the date of occurrence. It was further submitted by learned counsel for the appellant that the statement of the appellant was recorded u/s 313 Cr.P.C. on 2.11.1983 in which the appellant has stated his age as 18 years. He has also filed copy of certificate issued by Board of High School & Intermediate Education, U.P. for his Class X Examination in which his date of birth is recorded as 1.4.1966 (First April Nineteen Hundred Sixty Six) and he has also filed Scholar's Register & Transfer Certificate Form issued by B.S.V. Inter College, Jaspur in which his date of Birth has also been mentioned as 1.4.1966. On the basis of these documents, learned counsel for the appellant submitted that the said incident took place on 3.10.1981 and his date of birth as per the

above-said documents is 1.4.1966 and accordingly on the date of incident, the appellant was 15 years, 6 months and 2 days of age.

20. Learned counsel for the appellant further submitted that the provisions of the U.P. Children Act, 1951 (U.P. Act No. 1 of 1952) were applicable in the said area and also in the said district where the crime was committed. Under the U.P. Children Act, 1951, "child" has been defined u/s 2(4) which reads as under:-

2(4) "child" means a person under the age of sixteen years.

21. Learned counsel for the appellant further submitted that since the present appellant was under the age of 16 years on the date of incident, hence he was entitled for the benefit of U.P. Children Act, 1951. He has relied on the judgment of Hon'ble Apex Court in the case of *Bhoop Ram V. State of U.P.* reported in 1989 SCC (Cri) 486. He has referred Para 8 of the said judgment which reads as under:-

> 8. *Since the appellant is now aged more that 28 years of age, there is no question of the appellant now being sent to an approved school under the U.P. Children Act for being detained there. In a somewhat similar situation, this Court held in* Jayendra Vs. State of U.P. *that where an accused had been wrongly sentenced to imprisonment instead of being treated as a "child" under Section 2(4) of the U.P. Children Act and sent to an approved school and the accused had crossed the maximum age of detention in an approved school, viz. 18 years, the course to be followed is to sustain the conviction but however quash the sentence imposed on the accused and direct his release forthwith. Accordingly, in that case also, we sustain the conviction of the appellant under all the charges framed against him but however quash the sentence awarded to him and direct his release forthwith. The appeal is therefore partly allowed insofar as the sentence imposed upon the appellant are quashed."*

22. Learned counsel for the appellant also placed reliance on the judgment of Hon'ble Apex Court in the case of *Pradeep Kumar v. State of U.P.* Reported in 1993 All.L.J. 1362. He has relied on Para 4 of the said judgment which is reproduced as under:-

> *4. Since the appellants are now aged more than 30 years, there is no question of sending them to an approved school under the U.P. Children Act for detention. Accordingly, while sustaining the conviction of the appellants under all the charges framed against them, we quash the sentences awarded to them and direct their release forthwith. The appeals are partly allowed in the above terms.*

23. Learned counsel for the appellant further placed reliance on the judgment of Hon'ble Apex Court in the case of *Upendra Kumar v. State of Bihar* reported in (2005) 3 SCC 592. He has relied on Para 5 of the said judgment which is also reproduced as under:-

> *5. The course this Court adopted in Gopinath Ghosh case as also in Bhola Bhagat case was to sustain the conviction but, at the same time, quash the sentence awarded to the convict. In the present case, at this distant time, the question of referring the appellant to the Juvenile Board does not arise. Following the aforesaid decisions, we would sustain the conviction of the appellant for the offences for which he was been found guilty by the Court of Sessions, as affirmed by the High Court, at the same time, however, the sentence awarded to the appellant is quashed and the appeal is allowed to this extent. Resultantly, the appellant is directed to be released forthwith if not required in any other case.*

24. For the reasons as discussed above, the appeal of the appellant Dinesh Chandra is partly allowed. His conviction u/s 324 IPC is maintained. But being a child on the date of commission of crime, his sentence as awarded by learned I Additional Sessions Judge, Nainital for 2 years R.I. is set aside following the Apex Court Judgments is case of *Bhoop Ram, Pradeep Kumar and Upendra Kumar* **(Supra).** He is on bail. He needs not surrender and his bail bonds are hereby cancelled.

(Dharam Veer, J.)

Rajeev Dang

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